

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JAMES EMMETT FARR,

Plaintiff,

v.

DANIEL PARAMO, Warden, et al.,

Defendants.

Case No.: 16-cv-1279-JLS (WVG)

**ORDER DENYING WITHOUT
PREJUDICE MOTION FOR
APPOINTMENT OF COUNSEL**

(ECF No. 10)

Presently before the Court is Plaintiff James Emmett Farr's Motion for Appointment of Counsel and Declaration and Memorandum in Support Thereof ("Mot. for Counsel"). (ECF No. 10.) Plaintiff requests the Court to "appoint[] counsel in this serious and highly complex case" (*Id.* at 1.)

The Constitution provides no right to appointment of counsel in a civil case unless an indigent litigant may lose his physical liberty if he loses the litigation. *Lassiter v. Dept. of Soc. Servs.*, 452 U.S. 18, 25 (1981). Nonetheless, under section 1915(e)(1) of title 28 of the United States Code, district courts have the discretion to appoint counsel for indigent persons. This discretion, however, may be exercised only under "exceptional circumstances." *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991). "A finding of exceptional circumstances requires an evaluation of both the 'likelihood of success on the merits and the ability of the plaintiff to articulate his claims pro se in light of the complexity

1 of the legal issues involved.’ Neither of these issues is dispositive and both must be viewed
2 together before reaching a decision.” *Id.* (quoting *Wilborn v. Escalderon*, 789 F.2d 1328,
3 1331 (9th Cir. 1986)).

4 In the present case, Plaintiff—a prisoner at the Richard J. Donovan Correctional
5 Facility (“RJD”)—indicates that he cannot afford to pay an attorney to litigate this matter,
6 (Mot. for Counsel 1), and that he will be unable to effectively litigate the case both due to
7 unfamiliarity with the law and the electronic format in which the prison library’s legal
8 documents are contained, (*id.* at 2). Plaintiff further indicates that although he believes he
9 has “a colorable claim for relief,” the complexity of the issues presented “might try even
10 an established advocate’s skills,” and therefore “are admittedly too much for this plaintiff
11 to fairly and adequately prosecute in this court.” (*Id.*)

12 However, Plaintiff has successfully navigated the Court system thus far, filing a
13 Complaint with attachments totaling one-hundred-and-nineteen pages. (ECF No. 1.) And
14 Plaintiff even tracked down supplemental addresses for two Defendants the United States
15 Marshals were initially unable to serve. (ECF No. 18.) This indicates that Plaintiff at least
16 has a base understanding of and ability to litigate this action. And although Plaintiff may
17 be unfamiliar with the electronic format of his current law library, there is no indication it
18 will effectively foreclose Plaintiff’s ability to litigate this action.

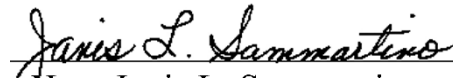
19 Further, Plaintiff’s Summonses were only recently returned executed, and the early
20 stage of the litigation also counsels against appointing counsel at this time. *See Wilborn*,
21 789 F.2d at 1331 (“If all that was required to establish successfully the complexity of the
22 relevant issues was a demonstration of the need for development of further facts, practically
23 all cases would involve complex legal issues.”). Finally, while the Court has previously
24 determined that Plaintiff’s case “may not be entirely without merit,” (Order Directing U.S.
25 Marshal Serv. 2, ECF No. 11), that determination was made only within the context of the
26 very “low threshold” for proceeding past the *sua sponte* screening required for the Court
27 to order United States Marshal service. *See Wilhelm v. Rotman*, 680 F.3d 1113, 1123 (9th
28 Cir. 2012). Almost the entirety of Plaintiff’s Complaint relies on either Plaintiff’s own

1 statements of the wrongs he has allegedly suffered at the hands of Defendants, or on
2 inferences from the documents Plaintiff attached to his Complaint. Accordingly, the Court
3 simply does not have enough facts at this time to determine whether Plaintiff has a strong
4 likelihood of success on the merits such that appointment of counsel is warranted.

5 In sum, Plaintiff has adequately litigated the case thus far, the case is still in its
6 infancy, and the Court is currently unable to determine how likely Plaintiff is to succeed
7 on the merits of his claim. For these reasons, neither the interests of justice nor exceptional
8 circumstances warrant appointment of counsel at this time. Accordingly, the Court
9 **DENIES** Plaintiff's request **WITHOUT PREJUDICE**. Should circumstances change,
10 Plaintiff may be permitted to file another Motion for Appointment of Counsel.

11 **IT IS SO ORDERED.**

12 Dated: March 23, 2017


Hon. Janis L. Sammartino
United States District Judge